

STATE OF MICHIGAN
IN THE SUPREME COURT

ALBERTA STUDIER, PATRICIA M. SANOCKI,
MARY A. NICHOLS, LAVIVA M. CABAY,
MARY L. WOODRING, AND
MILDRED E. WEDELL,

Plaintiffs-Appellants,
v

MICHIGAN PUBLIC SCHOOL EMPLOYEES'
RETIREMENT BOARD, MICHIGAN PUBLIC
SCHOOL EMPLOYEES' RETIREMENT
SYSTEM, MICHIGAN DEPARTMENT OF
MANAGEMENT AND BUDGET, AND
TREASURER OF THE STATE OF MICHIGAN,

Defendants-Appellees

Supreme Court No. 125765

Court of Appeals No. 243796

Ingham County Circuit Court
No. 00-92435-AZ

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**AMICUS CURIAE BRIEF OF THE BOARDS OF GOVERNORS OF
EASTERN MICHIGAN UNIVERSITY, CENTRAL MICHIGAN UNIVERSITY,
WESTERN MICHIGAN UNIVERSITY, NORTHERN MICHIGAN UNIVERSITY,
FERRIS STATE UNIVERSITY, AND
MICHIGAN TECHNOLOGICAL UNIVERSITY**

ORAL ARGUMENT NOT REQUESTED

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INTRODUCTION

Amici, the Boards of Governors of Eastern Michigan University, Central Michigan University, Western Michigan University, Northern Michigan University, Ferris State University, and Michigan Technological University (the "Universities") are constitutionally created autonomous public universities of the State of Michigan. The Universities serve the people of the State of Michigan as educators, as researchers, and as major employers.

As of September 30, 2003, the Universities, together with Lake Superior State University, had 4,652 retirees and beneficiaries, and their dependents who receive health care benefits from the Defendant, the Michigan Public School Employees' Retirement System ("MPERS"). They also have another 3,801 active employees and 740 inactive employees who are accruing or have accrued health care benefits under MPERS for themselves and their beneficiaries and dependents, although they are not currently receiving benefits.¹ The six universities, together with Lake State University, are the only Michigan universities whose employees participate in MPERS.

MPERS has projected that the health care contributions of the Universities to MPERS for its fiscal year beginning October 1, 2004 and ending September 30, 2005 ("FY 2005") will approximate \$22 million. Such contributions to MPERS will range from as low as 12% of the active MPERS payroll of one of the Universities to as high as 21% of the active MPERS payroll of another of the Universities.

¹ See MPERS Separate Actuarial Valuation as of September 30, 2003 (Exhibit 1 hereto).

Unfunded accrued liability of MPSERS for retiree health benefits has increased from \$1.5 billion on September 30, 1985 to \$15.71 billion on September 30, 2003. During FY 2003, MPSERS unfunded accrued retiree health benefit liability increased by \$1.33 billion.²

The actuary for the Defendant Retirement Board has projected that without any adjustment in benefits, health care costs of all reporting units (which includes all MPSERS employers and not just the Universities), would reach 10% of active MPSERS payroll in approximately 2010, 20% of active MPSERS payroll in approximately 2024 and 35% of active MPSERS payroll in approximately 2036.³

The rapid growth in health care costs and the projected acceleration in the growth of such costs in the future could be financially devastating to the Universities and other reporting units (employers) in MPSERS, if (as contended by Plaintiffs) the Legislature, the Retirement Board and the Department have retained no ability to control the escalation in costs.

The decision of this Court on the issues raised on appeal will directly affect the health care benefits of the employees and retirees of the Universities and their beneficiaries and dependents, as well as the costs that the Defendants are currently assessing each of the Universities and other reporting units for such benefits.

The Court of Appeals, on February 3, 2004 issued its opinion holding, in part, that MCL 38.1391(1) creates a contractual obligation on MPSERS, to provide health

² Actuarial Valuation as of September 30, 2003 for MPSERS Health Benefits (Exhibit 2 hereto).

³ Gabriel, Roeder & Smith, Public School Employees Retirement System Strategic Plan Update Initiative 2004 (Exhibit 3 hereto).

care coverage that is subject to the contract impairment clauses of the federal and state Constitutions. US Const art I, §10; Mich Const 1963, art 1, §10. The Defendants-Appellants (the “Defendants”) have appealed from that determination in No. 125766.

The Court of Appeals also held that (i) “health benefits are not accrued financial benefits as that term is used in Const 1963, art 9, §24, and (ii) assuming that MCL 38.1391(1) creates a contract requiring MPSERS to provide health care benefits, the Board did not substantially impair the contract. The Plaintiffs-Appellants (the “Plaintiffs”) have appealed from both of these determinations in No. 125765.

The Universities, who expect to be assessed by MPSERS for an amount in excess of \$22 million for FY 2005 for retiree health care costs, clearly have a stake in the outcome of this case. The Universities, therefore, file this Brief in an effort to assist this Court in its review of the decisions of the Court of Appeals on these issues. The Universities submit that Court should reverse the decision of the Court of Appeals holding that MCL 38.1391(1) creates a contractual obligation on MPSERS.⁴ The Universities further submit that this Court should affirm the decision of the Court of Appeals holding that health benefits are not “accrued financial benefits” protected under Const 1963, art 9, §24, and that the Defendants did not impair any contract.

⁴ Since the Court of Appeals went on to hold that the change in health benefits in issue in this case did not deprive Plaintiffs of a contract right, its holding that the benefits are contractual is technically *dictum*. However, unless the Court of Appeals’ published opinion on this point is reversed, it will deprive public bodies of an important defense in future cases.

ARGUMENT

I. THE COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT THE LANGUAGE OF MCL 38.1391(1) DEMONSTRATES A CLEAR EXPRESSION OF LEGISLATIVE INTENT TO CREATE CONTRACTUAL RIGHTS FOR PUBLIC SCHOOL RETIREES.

The Universities concur with the Defendants that the Court of Appeals erroneously concluded that the language of MCL 38.1391(1) demonstrates a clear expression of legislative intent to create contractual rights for public school retirees for the following reasons:

A. MCL 38.1391(1) Does Not Satisfy the Criteria that Have Been Used by the Courts for Determining Whether the Legislature Has Created a Contract Obligation.

The Universities agree with the legal analysis of the Defendants that the language of MCL 38.1391(1) does not satisfy the criteria that have been used by the courts in evaluating whether the government has created a contractual obligation. Those criteria are extensively discussed in the Defendants-Appellants' Brief on Appeal in No. 125766 and need not be repeated by the Amici. Those criteria clearly demonstrate that no contract was created by MCL 38.1391(1).

B. No Language in MCL 38.1391(1) Suggests that a Contract was Created.

The Court of Appeals only briefly discussed MCL 38.1391(1) in its Opinion. While it recognized that the language employed in a statute must be "plain and susceptible of no other reasonable construction than that the legislature intended to be bound to a contract," the Court of Appeals provided no analysis for its conclusion that "the language of MCL 38.1391(1) demonstrates a clear expression of legislative intent to create contractual rights for public school employees." Studier v. Michigan Public School Employees Retirement Board, 260 Mich App 460, 476; 679 NW2d 88 (2004).

No language of MCL 38.1391(1) refers to contractual rights, lifetime rights or unalterable rights. Also, no language in MCL 38.1391(1) requires the Retirement Board and the Department of Management and Budget (the "Department"), to authorize a health care plan that can only be improved and cannot be otherwise amended or restructured. No language in MCL 38.1391(1) prohibits further amendments of the Michigan Public Employees Retirement Act ("MPSERA") by the Legislature. See Fun 'N Sun RV, Inc. v Michigan, 447 Mich 765; 527 NW2d 798 (1994), cert denied, 514 US 1127 (1995).

The fact that MCL 38.1391(1) specifically refers to "the plan authorized by the retirement board and the department" makes it clear that the Legislature contemplated that the health care coverage could be determined and modified from time to time by the Retirement Board and the Department, as determined in their sole discretion. If this were not the intent of the Legislature, the retirees and their beneficiaries and dependents would be limited to the health care plan which was first adopted by the Retirement Board and the Department in 1974, when the predecessor to MCL 38.1391(1) was adopted. If MCL 38.1391(1) should be read to prohibit the health care plan from being revised from time to time, all revisions to the plan made subsequent to 1980 should be disregarded. This would include disregarding all medical plan improvements, dental benefits, vision benefits and hearing benefits. Nothing in MCL 38.1391(1) limits the discretion of the Retirement Board and the Department with regard to the design of the retiree health benefit plan or limits the right of the Legislature or the Retirement Board and the Department to revise that plan from time to time.

The Court of Appeals noted that in Musselman v Governor, 448 Mich 503; 533 NW2d 237 (1995) ("Musselman I"), a majority of this Court stated that "the defendants [in that case] conceded that the statutes [including § 91(1)] created a right to receive health benefits that may not be impaired,' and that 'defendants concede that retirement health care benefits are contractual benefits subject to Const 1963, art 1, §10.'" Studier, 260 Mich App at 476, quoting Musselman I, 448 Mich at 519 n 19. The Court of Appeals also correctly acknowledged that the concessions of the defendants in Musselman I are not binding in the present litigation. Without these concessions, there is no basis for the Court of Appeals to conclude that MCL 38.1391(1) demonstrates a clear expression of legislative intent to create contractual rights for public school employees.

C. The Rationale for Adoption of Const 1963, art 9, §24 Indicates that Health Care Benefits are a Gratuity.

The conclusion of the Court of Appeals that MCL 38.1391(1) created contractual rights is also entirely inconsistent with the law in effect prior to Const 1963, art 9, §24. Before the adoption of Const 1963, art 9, §24, the funding of public pensions and other benefits, such as the pension benefits provided under MPSERS, was viewed in Michigan as a gratuity and not required by law. See Musselman I, *supra*; Shelby Twp Police and Fire Retirement Board v Shelby Twp, 438 Mich 247; 475 NW2d 249 (1991); Advisory Opinion re Constitutionality of 1972 PA 258, 389 Mich 659; 209 NW2d 200 (1973); Brown v City of Highland Park, 320 Mich 108; 30 NW2d 798 (1948); Retired Policemen & Firemen of the City of Lincoln Park v City of Lincoln Park, 6 Mich App 372; 149 NW2d 206 (1967).

The comments of Richard C. Van Dusen, Chair of the Rules and Resolutions committee of the Constitutional Convention, clearly establish the status of Michigan law prior to Const 1963, art 9, §24, and the reason for the adoption of §24:

MR. VAN DUSEN: Mr. Chairman and members of the committee, this proposal by the committee is designed to do 2 things: first, to give to the employees participating in these plans a security which they do not now enjoy, by making the accrued financial benefits of the plans contractual rights. This you might think, would go without saying, but several judicial determinations have been made to the effect that participants in pension plans for public employees have no vested interest in the benefits which they believe they have earned; that the municipalities and the state authorities which provide these plans provide them as a gratuity, and therefore it is within the province of the municipality or the other public employer to terminate the plan at will without regard to the benefits which have been, in the judgment of the employees, earned.

Now, it is the belief of the committee that the benefits of pension plans are in a sense deferred compensation for work performed. And with respect to work performed, it is the opinion of the committee that the public employee should have a contractual right to benefits of the pension plan, which should not be diminished by the employing unit after the service has been performed. Now, this does not mean that a municipality or other public employing unit could not change the benefit structure of its pension plan so far as future employment is concerned. But what it does mean is that once an employee has performed the service in reliance upon the then prescribed level of benefits, the employee has the contractual right to receive those benefits under the terms of the statute or ordinance prescribing the plan. This is the first section. It confers the contractual right. It should confer upon public employees a considerably greater degree of security with respect to the knowledge that they will receive the benefits when the time comes.

Now, the second provision of this proposal deals with the financial aspects of the maintenance of pension plans. There are 2 kinds of problems in the funding of any pension plan. One is past service benefits which have not been adequately funded. And in the case of many of our public employee retirement systems, years have gone by when insufficient money has been put into the fund to take care of the future benefits which would in due course accrue to persons retiring from public employment . . .

All of the pension plans and retirement systems maintained by the state and its political subdivisions will be subject, if this proposal is adopted, to the requirement that in every year the public employer must

put into the fund enough money to currently fund the benefits attendant upon service rendered by its employees in that year. This is as far as we believe we can reasonably go in mandating municipalities to do what they should have been doing for many years past, but which they have not been doing for many years past.

Constitutional Convention Record Feb 2, 1962.

Thus, Const 1963, art 9, §24 was intended to eliminate the gratuitous nature of public pensions and to establish a contractual obligation on the part of the State of Michigan and its political subdivisions for the funding of public pensions. It created contractual rights and obligations for pension benefits where no such rights previously existed. This Court, however, in numerous cases, has recognized that Const 1963, art 9, §24 was intended to create a very limited exception to the rule that benefits provided by statute are gratuities and not contractual obligations. In this regard, this Court in Kosa v State Treasurer, 408 Mich 356; 292 NW2d 452 (1980) found that pre-constitution accrued retirement liabilities were not protected under Const 1963, art 9, §24; in Tyler v Livonia Public Schools, 459 Mich 382; 590 NW2d 560 (1999), the majority of this Court held that Const 1963, art 9, §24 “protects only pension benefits, not worker’s compensation benefits from diminishment or impairment;” and in Jurva v Board of Education of Rochester Community Schools, 419 Mich 209; 351 NW2d 813 (1984), this Court concluded that early retirement incentives are not “financial benefits” and therefore, are not protected under Const 1963, art 9, §24.

If as discussed in Section II below, this Court affirms the decision of the Court of Appeals that Const 1963, art 9, §24 does not apply to health care benefits, health care benefits should be viewed as a gratuity in the same manner as pension benefits were viewed prior to the adoption of Const 1963, art 9, §24. Therefore, absent clear legislative intent to create contractual rights, this Court should not imply from the

language of MCL 38.1391(1), a legislative intent to change existing law which would view such benefits as a gratuity.

D. The Court of Appeals Erred in Concluding the Retiree Health Care Benefits are Vested and in Equating Vesting with Contractual Rights.

The Court of Appeals' conclusion that "the language of MCL 38.1391(1) demonstrates a clear expression of legislative intent to create contractual rights for public school employees," 260 Mich App at 476, was unsupported other than by footnote 9. In footnote 9, the Court of Appeals stated simply that "[b]ecause all of the plaintiffs in this case have retired and, therefore, have vested health benefits, a discussion about when health care benefits become vested benefits is not necessary in this case."

The Court of Appeals cited no support for the conclusion that the Plaintiffs' health care benefits are "vested." There is no statutory language in MPSEERA that "vests" the Plaintiffs or any other retiree in health care benefits. The only references to the words "vested" or "vest" or "vesting" are in MCL 38.1304(3) and 38.1382, both of which refer exclusively to retirement allowances, which are defined in MCL 38.1307(5) as retirement payments. The fact that the Legislature used the term "vest" in regard to pension benefits but not in regard to health care benefits provides strong legal evidence that it did not intend to "vest" health care benefits. The fact that the Plaintiffs and other retirees are receiving health care benefits is evidence of eligibility, not vesting. MPSEERA contains no language providing for vesting of retiree health benefits.

Further, even if the retirees were deemed to be "vested" in retiree health benefits, both the Court of Appeals and the Plaintiffs incorrectly equate vested benefits with benefits that are contractually and constitutionally protected. The circuit court

made a similar error in concluding that where a retiree's rights to health benefits are "vested", that means the retiree has contractually protected benefits which are subject to the protections afforded by the nonimpairment clauses of the United States and Michigan Constitutions.

The fact that a retiree has satisfied all criteria necessary to receive retiree health care benefits has no bearing on whether such benefits are constitutionally protected under Const 1963, art 9, §24 or under the impairment provisions of US Const, art 1, §10 or Const 1963, art 1, §10. Being in receipt of retiree health plan benefits only means that a retiree is eligible for such retiree health plan coverage as is authorized by the Retirement Board and the Department pursuant to MCL 38.1391(1). Further, the fact that the retiree may be eligible to receive such health care benefits as the Retirement Board and the Department may authorize from time to time, does not mean that the Legislature has waived its sovereign right to amend the statute under which it authorized the Retirement Board and the Department to create a retiree health care plan (See Section IV below). Thus, the ruling of the circuit court and the subsequent ruling by the Court of Appeals that the health benefits in question were "vested" have no bearing on the question of whether the benefits which a retiree is receiving are contractually guaranteed by MCL 38.1391(1) and may not be changed by the Legislature in subsequent years.

There is nothing in MPSERA that limits the right of the Legislature to amend MPSERA.

E. Under Analogous Federal Law, Retiree Health Benefits Would Not be Protected.

The federal law regulating private pensions and health care benefits (the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), while not directly applicable, is instructive on the issues of vesting and contractual rights. ERISA provides a regulatory scheme which includes establishing minimum eligibility, vesting and accrual standards for pensions. 29 USC 1052, 1053 and 1054. However, minimum eligibility, vesting and/or accrual standards were not established under ERISA for health care benefits. 29 USC 1051(1). Instead, under ERISA eligibility, vesting and benefits accrued requirements are dependent upon the terms of the plan established by the employer. As the Federal courts have explained:

In rejecting the automatic vesting of welfare plans, Congress recognized the need for flexibility with respect to an employer's right to change medical plans. As the Court of Appeals for the Second Circuit has observed:

Automatic vesting was rejected because the costs of such plans are subject to fluctuating and unpredictable variables. Actuarial decisions concerning fixed annuities are based on fairly stable data, and vesting is appropriate. In contrast, medical insurance must take account of inflation, changes in medical practice and technology, and increases in the cost of treatment independent of inflation. These unstable variables prevent accurate prediction of future needs and costs . . .

Moore v. Metropolitan Life Ins Co, 856 F2d 488, 492 (2d Cir 1988)

Employers are "generally free . . . for any reason at any time, to adopt, modify or terminate welfare plans." Curtiss-Wright Corp. v. Schoonejongen, 514 US 73, 78, 131 L. Ed. 2d 94, 115 S. Ct. 1223 (1995). They may agree of course to relinquish their right to unilaterally terminate those benefits and provide for lifetime vesting. * * * This court has made clear that the "plan participant bears the burden of proving, by a preponderance of the evidence, that the employer intended the welfare benefits to be vested." [In re Unisys Corp Retiree Med Benefit "ERISA" Litig, 58 F3d 896, 902 (3d Cir 1995)].

In applying these standards, it must be remembered that to vest benefits is to render them forever unalterable. Because vesting of welfare plan benefits constitutes an extra-ERISA commitment, an employer's commitment to vest such

benefits is not to be inferred lightly and must be stated in clear and express language.

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v Skinner Engine Co, 188 F3d 130, 138-39 (3d Cir 1999).

The rationale used by Congress in not requiring automatic vesting of retiree health care benefits for private employers under ERISA without clear and express language requiring vesting should be equally applicable to the Legislature's authorization that the Retirement Board and the Department adopt a retiree health care plan. Due to the absence of clear and express language in MCL 38.1391(1) providing for vesting, no such requirement should be imposed by this Court.

II. THE COURT OF APPEALS PROPERLY RULED THAT HEALTH BENEFITS ARE NOT ACCRUED FINANCIAL BENEFITS WHICH ARE PROTECTED FROM DIMINISHMENT OR IMPAIRMENT FROM CONST 1963, ART 9, §24.

The Court of Appeals affirmed the circuit court's grant of summary disposition with regard to count I of Plaintiffs' complaint. That court determined that retiree health benefits are not "accrued financial benefits" under Mich Const 1963, art 9, §24. Plaintiffs maintain that this summary disposition was in error on the basis that modifications made by MPSERS to the retiree health plan constituted a substantial "impairment of contract" in violation of the Michigan and US Constitutions. Plaintiffs' position is based in part on their belief that MPSERS retiree health benefits are "accrued financial benefits" under Const 1963, art 9, §24.

In Const 1963, art 9, §24, Michigan provides explicit constitutional protection for public employee pensions. While courts in some other states have ruled that public employee pensions are "contractual" and are entitled to protection against impairment (even without a state constitutional counterpart to Const 1963, art 9, §24), the rule in

Michigan (prior to adoption of the 1963 Constitution) was that public employee pensions were gratuities. As noted above, the main reason for adding Const 1963, art 9, §24 to the Michigan Constitution was to overrule court decisions determining that public pension rights were gratuities. The intent of this constitutional provision was to identify a type of benefit (namely an “accrued financial benefit”) that (a) is a contract right protected against impairment and (b) is required to be funded.

The term “accrued financial benefits” used in Const 1963, art 9, §24 referred to pension (i.e. retirement income) benefits earned during a given time interval in consideration of a worker’s service during that interval. As Mr. Van Dusen explained:

[T]he words “accrued financial benefits” were used designedly, so that the contractual right of the employee would be limited to the deferred compensation involved in any pension plan, ...The only constitutional requirement would be the current funding of current service benefits.

Testimony of Mr. Van Dusen at pp. 773-74 of the Official Record of the Constitutional Convention, February 2, 1962. Mr. Brake echoed Mr. Van Dusen’s understanding as to the limited scope of the constitutional protection on May 9, 1962:

There is only one interpretation, I think, of which this second paragraph [of Const 1963, art 9, §24] is capable; namely, we are saying to the retirement systems of the state and of the local units: you must put into that fund this year the liability, an amount to cover the liability, that accrues this year. ... All we ask is that you don’t get any further behind than you are now.

Id. p. 3184.

A number of Michigan cases have considered the scope of Const 1963, art 9, §24. Those cases have focused on the extent of the pension funding obligation, rather than the scope of the protection against impairment. Section 24’s language does not distinguish between the “financial benefits” that must be funded and those that are

“contractual obligations” and it follows that those benefits that must be funded are the only benefits that may not be impaired. Taken together, the cases support an interpretation of the term “financial benefits” that is limited to future retirement income benefits that are earned as part of compensation for years of service after the effective date of Const 1963, art 9, §24.

In Kosa v. State Treasurer, 408 Mich 356; 292 NW2d 452 (1980), Michigan teachers brought an action against the State Treasurer to require funding of MPSERS under the Constitution and applicable statutes. The Michigan Supreme Court noted that, at the time of the 1961 Constitutional Convention, the underfunding of MPSERS pension obligations amounted to about \$600 million. Const 1963, art 9, §24 was adopted to classify pension benefit payments as contractual obligations and to require adequate annual appropriations to MPSERS. The Court stated that during the years 1963 until 1974, the Legislature appropriated adequate sums to meet anticipated post-constitution (“post-con”) retirement reserve requirements. However, the Legislature failed to make adequate appropriations for the pre-constitution (hereinafter “pre-con”) accrued retirement liabilities. In 1972 and 1974, the Legislature increased benefits for both “pre-con” and “post-con” retirants. However, during the 1974-1975 fiscal year, the “pre-con” reserves were exhausted and MPSERS borrowed from the “post-con” reserve to pay “pre-con” liabilities. The plaintiffs were “pre-con” and “post-con” retirees and active MPSERS members who sought equitable relief from the borrowing.

The Court of Appeals had ruled that borrowing by MPSERS from the “post-con” reserve to pay for “pre-con” liabilities was illegal and ordered the MPSERS Board to

cease, as unconstitutional, the use of “post-con” funded reserves to defray “pre-con” unfunded accrued liabilities.

While the case was pending in the Michigan Supreme Court, the Legislature (rather than make the appropriations required by the Court of Appeals) changed the actuarial method for determining required funding from the previous “attained age” system to the “entry age normal” system. Under its new method, a lower level of initial reserves was required, with higher contributions required later. The Court stated that this change in the actuarial method created an excess of funds of \$475 million that was more than sufficient to restore the \$460 million “borrowed” from the “post-con” reserves.

This Court, in Kosa, held that the MPSERS Board had directly violated the specific language of Const 1963, art 9, §24 which prohibits using funding of “post-con” reserves for financing “pre-con” unfunded accrued liabilities. The Court then held that the Court of Appeals correctly ruled that the MPSERS Board’s borrowing of “post-con” reserves was illegal and subject to mandamus. The Court concluded that the Legislature was under no Constitutional obligation to fund “pre-con” retirement reserves at a given level and therefore it had not violated the Constitution in failing to do so. Thus, Const 1963, art 9, §24 did not apply to pension benefits earned before 1963. Instead, the constitutional funding requirement was limited to the pension benefits accrued (or earned) subsequent to the effective date of the Constitution.

In Shelby Twp Police and Fire Retirement Bd v Shelby Twp, 438 Mich 247, 254 n 3; 475 N.W.2d 249 (1991), this Court held that art 9, § 24 “defined ‘accrued financial benefits’ as the right to receive certain pension payments on the basis of services performed.” There, the Court considered whether the Township’s annual pension fund

contribution must include both current service cost and unfunded accrued liabilities. It concluded that Const 1963, art 9, §24 expressly mandates “*townships and municipalities* to fund all public employee pension systems to a level which includes unfunded accrued liabilities.” 438 Mich at pp 255-56 (emphasis supplied).

In Jurva v. Board of Education of Rochester Community Schools, 419 Mich 209; 351 NW2d 813 (1984), the issue was whether the Board of Education of Rochester Community Schools had authority to provide for early retirement incentive payments outside of MPSERS and whether such incentives were contrary to the Michigan Constitutional mandate that financial benefits of a pension plan or retirement system be funded through the fiscal year in which the services upon which the benefits are based are performed. The Court there concluded that early retirement incentives are not benefits tied to time and service, but rather are compensation for a tenured teacher’s waiver of the Constitutional right to continued employment. The dollar amount of the benefit is measured not by the number of years served, but rather by the number of years of relinquished employment. As such, the Supreme Court concluded that early retirement incentives are not “financial benefits” and therefore are not protected under Const 1963, art 9, §24. It reached its conclusion in part upon a statement that the overriding concern of the delegates to the Constitutional Convention was the establishment and maintenance of the actuarial soundness of the State’s pension systems, not with the protection of other financial systems. It ruled that if the school district were to fail to adequately fund the present accrued liability for pension benefits the soundness of the pension system would be in jeopardy, whereas a failure to provide

adequate funds to pay early retirement incentives would not have such an effect since those benefits are not paid from the retirement system.

In Tyler v. Livonia Public Schools, 459 Mich 382; 590 NW2d 560 (1999), a majority of the Supreme Court held that Const 1963, art 9, §24 of the Michigan Constitution “protects only pension benefits, not worker’s compensation benefits, from diminishment or impairment.” Accordingly, the Court held that the plaintiff’s pension benefits had not been diminished or impaired by application of a coordination requirement to his worker’s compensation benefits.

In Hannan v. Detroit City Council, 2000 WL 33407200 (Mich App 2000) (unpublished, attached as Exhibit 4), the Michigan Court of Appeals considered the constitutionality of a pension enhancement ordinance adopted by the Detroit City Council. The ordinance increased the pension multiplier used in determining pension benefits and provided fully-paid hospitalization to widows of police officers and firefighters who retired prior to the date of the ordinance. The plaintiff argued that the City Council violated the Constitution when it passed the ordinances because it failed to fund the supplemental benefits. The Court of Appeals held that the plain meaning of the Constitutional provision was that funding must take place when an employee’s service earned the benefit. In this case, because the ordinance affected retirees and not those that were currently working and accruing financial benefits, the Court held that Const 1963, art 9, §24 did not apply. In this regard, the Court concluded that the ordinances confer a benefit that was not earned during the year the benefit was given.

Accordingly, the Universities submit that the Court of Appeals properly rejected Plaintiffs’ argument that health benefits are by Const 1963, art 9, §24. Moreover, the

Plaintiffs' argument (that retiree health insurance may somehow be quantified or valued and included within the term accrued financial benefits) could logically be extended to needs of retirees besides medical care. Like everyone else, retirees need food, shelter, transportation and other goods or services that can be purchased. If a future legislature were to enact an amendment authorizing MPSERS to provide financial assistance to pay for groceries, housing and fuel, then (by Plaintiffs' reckoning) those would become accrued financial benefits that could not be diminished or impaired.⁵ More likely (and still to the point), art 9, §24 could be read to protect various golden parachute retirement packages that some governmental entities grant to favored officials who are nearing the ends of their careers. If such a favored official obtains a sufficiently explicit promise from a compliant legislative body, then he/she will be able to argue that a successor legislative body will be constitutionally obligated to honor that promise.

The Court of Appeals in the present case noted that “[w]hen [Musselman I] was before the Supreme Court on rehearing in [Musselman v Governor (On Rehearing)], 450 Mich 574, 545 NW2d 346 (1996) (“Musselman II”)], three justices opined that the health benefits contained in § 91 were not accrued financial benefits for which there is constitutional protection under [Const 1963,] art 9, § 24,” and Justice Brickley, in a

⁵ In this regard, see In the Matter of Blossom Lippman et al., 66 N.Y.2d 313; 487 N.E.2d 897 (Ct App 1985) where the court found that retiree health benefits were not constitutionally protected under a provision of the New York Constitution similar to Article 9, Section 24. “[T]he only relation between health benefits and retirement benefits is the purely incidental one that the latter provides a means by which the former is paid in those instances where the employer has elected to pay less than the full premium. The result of a reduction in the proportion of the health insurance premium paid by the school district is that a retiree will receive a smaller retirement check, but this is no more a change in retirement benefits than would be an increase in the price of eggs at the supermarket or in a retiree’s apartment rent. The retiree has less to spend, but there has been no change in his retirement benefit.”

separate opinion, expressly did not reach this issue. 260 Mich App at 473. Thus, the issue is before this Court as a matter of first impression. As the parties' briefs will point out, courts from other jurisdictions have taken opposing views as to whether retiree health insurance expectations rise to the level of "contract rights" with constitutional protections. Blossom Lippman, *supra* footnote 5, held that retiree health insurance benefits were not constitutionally protected under a provision of the New York Constitution similar to Const 1963, art 9, §24. It is also noteworthy that an appellate court in California (a state whose courts have long protected public pensions as "contract rights") has recently concluded that the expectancy of free HMO or PPO coverage (based on 20 years of having provided such coverage) did not give rise to a contract right that such coverage would be continued:

In essence, the retirees argue that because for those first 20 years the District offered a medical insurance program that gave retirees the choice of free coverage under either an HMO or PPO/indemnity plan, and the retirees "accepted" this benefit, this "conduct" proves the parties interpreted the policy as requiring the provision of both a PPO and HMO plan. But the fact the retirees "accepted" the benefit of having alternative health plans does not mean they understood they were contractually entitled to such alternatives. Generous benefits that exceed what is promised in a contract are just that: generous. They reflect a magnanimous spirit, not a contractual mandate. * * *

The fact the District provided a free PPO benefit for 20 years -- before health insurance premiums skyrocketed and the cost of PPO coverage began far outpacing the cost of HMO coverage -- does not prove the District promised to provide that option forever. In our view, all the District promised retirees under the policy is to provide a medical insurance program in which they could enroll, and to subsidize their costs for enrolling in one of the plans offered. We conclude the retirees have no vested right under the policy to free PPO coverage.

Sappington v. Orange Unified School District, 119 Cal App 4th 949, 954-55 (2004)

Faced with this issue for the first time since Musselman II, this Court should affirm the decision of the Court of Appeals that MPSERS retiree health benefits are not

“accrued financial benefits” within the meaning of Const 1963, art 9, §24 of the Michigan Constitution.

III. IF HEALTH CARE BENEFITS ARE HELD TO BE SUBJECT TO CONST 1963, ART 9, §24, OR TO BE CONTRACTUALLY GUARANTEED, PLAINTIFFS’ PROTECTED BENEFITS SHOULD ONLY BE GUARANTEED AT THE BENEFIT LEVEL IN EFFECT IN THE YEAR THEY RETIRED.

Plaintiffs appear to claim that they have a right to lifetime retiree health care benefits, including a right to continue all benefit improvements granted from time to time by the Legislature and/or by the Retirement Board and the Department after they retire. There is no legal justification for this position, regardless of whether Plaintiffs’ claim is based on Const 1963, art 9, §24 or on an impairment of contract theory.

In Hannan v Detroit City Council, *supra*, the Michigan Court of Appeals considered the applicability of Const 1963, art 9, §24 to a pension enhancement ordinance adopted by the Detroit City Council. The ordinance increased the pension multiplier used in determining pension benefits (a “supplemental benefit”) and provided fully paid hospitalization to widows of police officers and fire fighters who retired prior to the date of the ordinance. The plaintiff argued that the City Council violated the constitution when it passed the ordinances because it failed to fund the supplemental benefit. The Court of Appeals held that the plain meaning of Const 1963, art 9, §24 was that funding must take place when employee’s service earned the benefit. Because the ordinance affected the retirees and not those who are currently working and accruing financial benefits, the Court held that Const 1963, art 9, §24 did not apply. It concluded that the ordinance conferred a benefit that was not earned during the year the benefit was given and therefore such benefit was not protected under Const 1963, art 9, §24.

Similarly, improvements in health care benefits which are made by the Legislature or by the Retirement Board and the Department subsequent to the date a retiree retired are not be protected under Const 1963, art 9, §24 because any such improvements would not be earned in the year the improvements were made. If all services ceased prior to the granting of health care improvements, under no interpretation can the improvements be protected under Const 1963, art 9, §24. Thus, even if the Plaintiffs were to prevail on their claim that Const 1963, art 9, §24 protects their health care benefits, Hannan would limit their benefits to the level of benefits in effect when they retired.

If, instead, Plaintiffs' claim is based on an impairment of contract theory under Const 1963, art 1, §10 or US Const, art 1, §10, their employment contract with the reporting units under any circumstances would have ceased upon their retirement. As such, their "contract" would be for the health care benefits that were in effect on such retirement. There would at best have been no consideration given by Plaintiffs through the performance of services or otherwise, for any benefit improvements granted by the Legislature or the Retirement Board and the Department, after their retirement.

Of the five remaining Plaintiffs in this lawsuit, two retired in 1982 and the other three retired in 1985, 1988 and 1993, respectively. Thus, if this Court should conclude that Const 1963, art 9, §24 protects their health care benefits or that such benefits are protected under Const 1963, art 1, §10 or US Const, art 1, §10, it should remand this case to the Circuit Court to determine whether their benefits were substantially impaired based on the health care plan in effect in the year each Plaintiff retired (i.e., in 1982,

1985, 1988 or 1993, as applicable to each Plaintiff). This would mean that all subsequent benefit improvements would be disregarded.

IV. IF MPSERS RETIREE HEALTH BENEFITS WERE CONTRACTUAL, THE STATE LEGISLATURE AND MPSERS RETAIN THE SOVEREIGN RIGHT TO CHANGE THOSE BENEFITS.

If this Court were to hold that the expectation of retiree health benefits is an accrued financial benefit, entitled to protection as a statutory contract, then that contract must be interpreted in accordance with the principle that one legislature may not tie the hands of, or bind, a successor legislature. See Mich Sheriffs' Ass'n v Treasury, 75 Mich App 516, 526; 255 NW2d 666 (1977). "The Legislature may not, by statute, restrict the ability of itself and subsequent Legislatures to adopt, amend, or repeal statutes." 1998 Mich OAG No 6990 (Aug 1, 1998).

In Butler v Pennsylvania, 51 US 402 (1851), the US Supreme court recognized the difficulties of finding contract impairment in a public employment context. In Butler, the Court considered whether the Pennsylvania legislature could constitutionally reduce the compensation of a public official. In holding that the legislature possessed the power to reduce the pay of canal commissioners from \$4 to \$3 per day, the Court distinguished between compensation already earned and that not yet earned:

The promised compensation for services actually performed and accepted ... may undoubtedly be claimed, both upon principles of compact and of equity; but to insist beyond this on the perpetuation of a public policy either useless or detrimental, and upon a reward for acts neither desired nor performed, would appear to be reconcilable with neither common justice nor common sense. The establishment of such a principle would arrest necessarily every thing like progress or improvement in government; or if changes should be ventured upon, the government would have to become one great pension establishment on which to quarter a host of sinecures.

51 US at 416.

To the extent retirement benefits are contractual, the non-impairment principle must be harmonized with the principle of not foreclosing actions by a subsequent legislature which are at variance with actions by its predecessor legislature. The US Supreme Court explained the interplay of these two principles:

When a State impairs the obligation of its own contract, the reserved-powers doctrine has a different basis. The initial inquiry concerns the ability of a State to enter into an agreement that limits its power to act in the future. As early as Fletcher v. Peck, [10 U.S. (6 Cranch) 87 (1810),] the Court considered the argument that "one legislature cannot abridge the powers of a succeeding legislature. ... It is often stated that "the legislature cannot bargain away the police power of a State." ... This doctrine requires a determination of the State's power to create irrevocable contract rights in the first place, rather than an inquiry into the purpose or reasonableness of the subsequent impairment. In short, the Contract Clause does not require a State to adhere to a contract that surrenders an essential attribute of its sovereignty.

US Trust Co v. State of New Jersey, 431 US 1, 23 (1977).

In Home Bldg & Loan Assn v Blaisdell, 290 US 398 (1934) the Supreme Court made it clear that, although the contract clause of the US Constitution is phrased in absolute terms, its prohibition on impairment must be accommodated to the inherent power of each state

to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end "has the result of modifying or abrogating contracts already in effect." Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.

290 US at 434-35 (citation omitted).

Thus, even if the Plaintiffs' retiree health coverage expectations were to be accorded the status of a contract right, the minor modifications to that coverage as challenged within the Plaintiffs' original complaint were well within the power of MPSERS to make. Our legal system is properly skeptical about lifetime contractual

obligations and this skepticism should be extended to Plaintiffs' position in this case. Consider, for example, the status of so-called lifetime employment contracts which the courts typically find to be contracts terminable at will: See Rowe v. Montgomery Ward & Co, 437 Mich 627, 636; 473 NW2d 268 (1991) ("[C]ontracts for permanent employment are for an indefinite period of time and are presumptively construed to provide employment at will"). See also Rood v. General Dynamics Corp, 444 Mich 107, 117 n 14; 507 NW2d 591 (1993) ("Contracts for 'permanent' or 'lifetime employment' are considered contracts for an indefinite duration and therefore presumptively terminable at the will of either party").

Public employers in Michigan and elsewhere face restricted budgets, increased life expectancy for retirees, medical costs that seem to defy control and the reluctance of taxpayers to shoulder increasing burdens. These employers must balance the income and benefit expectations of retirees, long-service employees and short-service employees while maintaining public services at acceptable levels. Public employers will have to make drastic cuts in services in order to meet the stated expectations of Plaintiffs: that the taxpayers of the State (many of whom lack health coverage as active employees, to say nothing of retiree health coverage) should pay any price, bear any burden or meet any hardship to sustain those expectations.

CONCLUSION AND RELIEF

Health care benefits are unlike pension benefits for which there are fixed annual payments for retirees. In contrast, the costs for benefits provided for health coverage increase due to improvements in medical services, equipment and technology.

Since pension payments are relatively fixed, the statutory framework under MPSEERA and Const 1963, art 9, §24 can provide retirees and beneficiaries with fixed benefits that are vested and constitutionally protected from impairment.

Because health care benefits are ever improving, the Legislature wisely did not legislatively adopt a health care plan, but instead delegated to the Retirement Board and the Department the duty to determine the structure of the health care plan from time to time in a manner that could rapidly adapt to improvements in health care as well as changes in costs.

Neither the Legislature nor the Michigan Constitution guaranteed a particular level of health care benefits to any retiree. This Court should not read into Michigan Constitution or MPSEERA, a guarantee that never existed. It should not impose lightly an indefinite financial obligation upon the Defendants when, unlike with retirement benefits, there is no ability to predict or control costs. This Court also should not impose its limitations and conditions upon changes to the health care plan provided under MPSEERA, since the Legislature has delegated that responsibility for structuring the Plan to the Retirement Board and the Department.


The Universities have filed a Motion requesting leave to file an Amicus Brief because they have a joint concern regarding both the rapidly increasing assessments to the Universities to pay for MPSERS health care benefits on a pay-as-you-go basis and the dramatic increases in unfunded health care liabilities of MPSERS. The Legislature of the State of Michigan granted the Retirement Board and the Department the flexibility necessary to design a health care plan that brings health care costs under control. This Court should not straight-jacket the Legislature, the Retirement Board and the


Department in their efforts to deal with this problem or substitute its standards for health care coverage for those established by the Retirement Board and the Department at the direction of the Legislature.

Respectfully submitted,

**MILLER CANFIELD PADDOCK AND
STONE, PLC**

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Dated: November 12, 2004

DELIB:2567456.4\060565-00017

EXHIBIT

1

March 23, 2004

Mr. Christopher DeRose
Director of Office of Retirement Services
General Office Building, 3rd Floor
7150 Harris Drive - P.O. Box 30171
Lansing, Michigan 48909

**Re: Separate Actuarial Valuation as of September 30, 2003 for
University Members of MPSERS (Pension Benefits Only)**

Dear Chris:

We have completed a separate actuarial valuation for current or former employees of the seven Michigan Universities who have withdrawn from the Michigan Public School Employees Retirement System (for employees hired on or after January 1, 1996) due to the enactment of Act No. 272 of the Public Acts of 1995. This actuarial valuation was prepared as of September 30, 2003, and utilized the same actuarial assumptions used for the September 30, 2003 valuation of MPSERS.

The results are presented in the following tables:

Table 1	-	Demographic Characteristics of University and Non-University Members as of September 30, 2003 and September 30, 2002
Table 2	-	Contribution Rates as of September 30, 2003 and September 30, 2002 as a Percentage of Payroll
Table 3	-	Contribution Rate as of September 30, 2003 as a Percentage of Payroll - University Employees Only
Table 4	-	Comparison of Actuarial Valuation Results as of September 30, 2003 (Pension Benefits Only)
Tables 5-A, 5-B and 5-C	-	Census Tables for Active University Members as of September 30, 2003 - All Members, MIP Plan and Basic Plan
Table 6	-	Active University Member Statistics by Type of Plan
Table 7	-	Active University Members in Active Service as of September 30, 2003 by Annual Salary
Table 8	-	University Pensions in Force on September 30, 2003 by Age, Type and Amount of Pension

Mr. Christopher DeRose
March 23, 2004
Page 2

Table 9	-	University Pensions in Force on September 30, 2003 by Type and Amount of Pension
Table 10	-	University Retirees and Beneficiaries Reported September 30, 2003 by Type of Pension
Table 11	-	Reconciliation of Member Counts from October 1, 2002 to September 30, 2003
Table 12	-	Summary of Liability Transfers between MPSERS and University from October 1, 2002 to September 30, 2003
Table 13	-	Allocation of September 30, 2003 MPSERS Assets
Table 14	-	Unfunded Actuarial Accrued Liability and Gain or Loss

Section 41a of the Public Acts of 1980 provides for "... the payment schedule for universities being based on and applied to the combined payrolls of the universities' employees who are members and who were hired before January 1, 1996 and the universities' employees who would have been members on or after January 1, 1996, but for the enactment of Act No. 272 of the Public Acts of 1995." We understand that the total additional payroll for University employees hired since January 1, 1996 was \$43.1 million as of September 30, 2003. Table 3 converts the employer percentage of payroll contribution rate that is based on MPSERS payroll *only* (12.15% for 2003) into the percentage of payroll (9.12% for 2003) based on the University employee payroll including *both* (i) MPSERS members and (ii) University members hired since January 1, 1996 who are not members of MPSERS. Therefore, 9.12% of this combined payroll should be contributed by the Universities (the 9.12% consists of a 5.41% employer normal cost and a 3.71% amortization payment).

Please call if you have any questions.

Sincerely,

Michael Karlin

MK:ns

Encls.

cc: Phillip J. Stoddard
Cynthia Moerdyck
Howard Rog
Zoya Pyatetsky

Table 1

Demographic Characteristics
Comparison of University and Non-University Members
As of September 30, 2003 and September 30, 2002

2003	Total	University Members	Non-University Members
<u>Active Members</u>			
Number	326,938	3,801	323,137
Average age	43.8	49.8	43.7
Average service	9.7	17.8	9.6
Reported payroll	\$10,043,862,298	\$129,306,084	\$9,914,556,214
Average annual payroll	\$30,721	\$34,019	\$30,682
<u>Inactive Members</u>			
Number	14,247	740	13,507
<u>Retirees & Beneficiaries</u>			
Number	139,814	4,672	135,142
Annual pension	\$2,251,765,872	\$53,616,058	\$2,198,149,814
Average annual pension	\$16,105	\$11,476	\$16,265

2002	Total	University Members	Non-University Members
<u>Active Members</u>			
Number	326,350	5,186	321,164
Average age	43.6	46.8	43.5
Average service	9.5	13.7	9.5
Reported payroll	\$9,707,280,750	\$149,045,640	\$9,558,235,110
Average annual payroll	\$29,745	\$28,740	\$29,761
<u>Inactive Members</u>			
Number	14,403	676	13,727
<u>Retirees & Beneficiaries</u>			
Number	135,277	4,640	130,637
Annual pension	\$2,094,381,929	\$51,988,949	\$2,042,392,980
Average annual pension	\$15,482	\$11,205	\$15,634

Table 2

**Contribution Rates as of September 30, 2003 and September 30, 2002
as a Percentage of Payroll**

Total - All MPSERS Members		
	October 1, 2003 Valuation	October 1, 2002 Valuation
Normal Cost	10.46%	10.35%
Amortization Payments	<u>3.19</u>	<u>1.92</u>
Total Contribution Requirement	13.65%	12.27%
Member Contributions	3.91%	3.90%
Employer Contributions	9.74%	8.37%
Payroll used in deriving contribution rates (in millions)	\$10,043.9	\$9,707.3
University Members		
	October 1, 2003 Valuation	October 1, 2002 Valuation
Normal Cost	11.10%	10.61%
Amortization Payments	<u>4.94</u>	<u>3.32</u>
Total Contribution Requirement	16.04%	13.93%
Member Contributions	3.89%	3.87%
Employer Contributions	12.15%	10.06%
Payroll used in deriving contribution rates (in millions)	\$129.3	\$149.1
Non-University Members		
	October 1, 2003 Valuation	October 1, 2002 Valuation
Normal Cost	10.45%	10.35%
Amortization Payments	<u>3.16</u>	<u>1.90</u>
Total Contribution Requirement	13.61%	12.25%
Member Contributions	3.91%	4.09%
Employer Contributions	9.70%	8.16%
Payroll used in deriving contribution rates (in millions)	\$9,914.6	\$9,558.2

Table 3

Contribution Rate as of September 30, 2003
as a Percentage of Payroll

	Using Member Payroll Only		Using Payroll of Non-Members Hired Since January 1, 1996 Also	
	Percentage of Pay	Dollar Amount (Millions)	Percentage of Pay	Dollar Amount (Millions)
Normal Cost	11.10%	\$14.358	8.33%	\$14.358
Amortization Payment	<u>4.94</u>	<u>6.391</u>	<u>3.71</u>	<u>6.391</u>
Total Contribution Requirement	16.04%	\$20.749	12.04%	\$20.749
Member Contributions	3.89%	5.034	2.92%	5.034
Employer Contributions	12.15%	15.715	9.12%	15.715
Payroll (millions)	N/A	\$129.3	N/A	\$172.4

MPSERS – University Employees Only

Table 4

**Comparison of Actuarial Valuation Results
as of September 30, 2003 - Pension Benefits Only**

	Total - All MPSERS Members	University Members	Non-University Members
1. Actuarial accrued liability - total	\$44,769,473,523	\$842,797,144	\$43,926,676,379
Active employees			
Inactive vested members	20,061,492,125	308,868,404	19,752,623,721
Retirees and surviving beneficiaries	627,907,670	26,095,717	601,811,953
	24,080,073,728	507,833,023	23,572,240,705
2. Assets at actuarial value	38,726,183,662	722,193,072	38,003,990,590
3. Unfunded (overfunded) actuarial accrued liability = (1) - (2)	6,043,289,861	120,604,072	5,922,685,789
4. Payment required to amortize unfunded actuarial accrued liability over 33 years as a level percentage of payroll =			
.052995595 x (3)	320,267,740	6,391,485	313,876,257
5. Normal cost - total	1,050,233,833	14,357,899	1,035,875,934
6. Total cost = (4) + (5)	1,370,501,573	20,749,384	1,349,752,191
7. Total payroll	10,043,862,298	129,306,084	9,914,556,214
8. Normal cost as a percentage of payroll	10.46%	11.10%	10.45%
9. Payment required to amortize unfunded actuarial accrued liability as a percentage of payroll			
Total cost = (8) + (9)	3.19%	4.94%	3.16%
10. Member portion	13.65%	16.04%	13.61%
11. Total employer cost = (10) - (11)	3.91%	3.89%	3.91%
12. Total employer cost = (10) - (11)	9.74%	12.15%	9.70%

MPSERS

Table 5-A

Employees in Active Service as of September 30, 2003
by Age and Years of Service

ALL UNIVERSITY MEMBERS

Age	Total	Years of Service								40 & over
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 - 39	
Total	3,801	319	433	699	890	647	485	223	81	24
Average Salary	\$34,019	\$9,852	\$26,205	\$31,566	\$34,621	\$37,333	\$40,280	\$52,340	\$60,973	\$68,174
20 - 24	4	4								
25 - 29	1,661	1,661								
30 - 34	38	20	18							
35 - 39	18,385	12,163	25,299							
40 - 44	122	25	48	44	5					
45 - 49	26,596	17,879	29,035	28,660	28,605	8				
50 - 54	359	86	67	98	100	32,609				
55 - 59	27,122	10,482	29,069	33,088	33,842	121	13	1		
60 - 64	559	38	76	127	183	34,826	32,672	21,015		
65 - 69	31,174	10,802	27,159	31,962	34,059	168	132	10		
70 and over	765	43	63	153	196	37,295	37,306	46,125		
	33,255	8,099	25,387	32,345	35,165	181	192	84	3	
	897	42	74	138	183	38,494	40,396	47,319	53,222	
	36,151	8,835	24,830	34,272	36,238	102	95	84	27	
	624	23	47	84	159	38,384	42,169	53,243	56,311	3
	37,488	7,881	25,588	30,216	34,180	60	44	32	38	40,562
	323	19	28	42	55	37,200	45,993	61,461	63,278	5
	38,839	9,035	25,798	24,466	31,460	6	7	8	12	53,208
	71	9	5	9	6	44,693	43,793	59,075	68,470	9
	42,413	3,021	9,266	23,834	27,385	1	2	4	1	76,668
	39	10	7	4	3	31,557	47,297	75,761	32,591	7
	35,268	3,457	11,134	10,812	66,483					79,778

Employees in Active Service as of September 30, 2003
by Age and Years of Service

UNIVERSITY MEMBERS - MIP PLAN

Age	Total	Years of Service									40 & over
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 - 39		
Total	2,031	259	376	512	357	200	163	97	51	16	
Average Salary	\$32,574	\$9,678	\$27,450	\$31,868	\$35,005	\$39,058	\$43,856	\$52,068	\$66,869	\$68,438	
20 - 24	4	4									
25 - 29	1,661	1,661									
	37	20	17								
30 - 34	18,280	12,163	25,477								
	89	19	40		1						
35 - 39	27,087	14,564	30,967	29	26,755						
	236	75	59	29,951	34						
40 - 44	25,376	9,856	30,451	31,532	38,516	1					
	295	31	67	89	59	30,640		1			
45 - 49	29,092	8,461	27,959	31,934	33,663	33,181	7	21,015			
	363	33	56	110	70	44	43	7			
50 - 54	31,846	8,757	26,685	32,098	34,910	41,038	38,795	46,909			
	415	34	65	108	78	45	51	32	2		
55 - 59	34,525	10,139	24,693	35,024	34,821	40,531	45,379	50,896	56,312		
	322	16	37	64	77	39	34	37	16	2	
60 - 64	37,475	10,027	28,382	32,056	35,410	40,241	46,167	50,982	61,283	36,098	
	201	16	25	37	32	25	24	15	22	5	
65 - 69	38,071	9,103	28,500	24,784	34,090	39,632	47,293	56,404	70,374	53,208	
	48	4	5	7	5	4	3	4	11	5	
70 and over	45,244	2,843	9,266	25,793	27,323	49,802	53,120	64,434	69,904	82,320	
	21	7	5	1	1	1	1	1		4	
	34,000	3,926	14,242	30,570	60,559	31,557	65,005	82,446		86,294	

Table 5-C

Employees in Active Service as of September 30, 2003
by Age and Years of Service

UNIVERSITY MEMBERS - BASIC PLAN

Age	Total	Years of Service								40 & over
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 - 39	
Total	1,770	60	57	187	533	447	322	126	30	8
Average Salary	\$35,677	\$10,607	\$17,993	\$30,741	\$34,364	\$36,561	\$38,470	\$52,550	\$50,950	\$67,647
25 - 29	1		1							
	22,258		22,258							
30 - 34	38	11	8	15	4					
	22,792	18,395	19,378	26,163	29,068					
35 - 39	122	8	10	31	66	7				
	30,954	20,859	17,469	36,449	31,435	32,890				
40 - 44	262	5	7	40	124	80	6			
	33,634	22,371	23,886	31,126	34,247	35,669	31,300			
45 - 49	405	10	7	44	128	124	89	3		
	34,611	5,926	15,002	33,713	35,321	35,966	36,586	44,296		
50 - 54	478	8	9	27	104	136	141	52	1	
	37,640	3,293	25,816	31,629	37,511	37,819	38,593	45,118	47,041	
55 - 59	301	7	10	20	81	63	61	47	11	1
	37,435	2,976	15,252	24,329	32,721	37,234	39,941	55,022	49,078	49,489
60 - 64	122	3	3	5	23	35	20	17	16	
	40,104	8,674	3,283	22,108	27,801	35,463	44,434	65,923	53,520	
65 - 69	23	5		2	1	2	4	4	1	4
	36,504	3,164		16,977	27,699	34,477	36,797	53,717	52,702	69,603
70 and over	18	3	2	3	2		1	3	1	3
	36,746	2,362	3,364	4,226	69,444		29,588	73,532	32,591	71,091

Table 6

**Active University Member Statistics
by Type of Plan**

	September 30, 2003		
	Total	MIP	Basic
Number of active members	3,801	2,031	1,770
Average age (years)	49.8	49.3	50.4
Average service (years)	17.8	15.2	20.7
Average annual pay	\$34,019	\$32,574	\$35,677
	September 30, 2002		
	Total	MIP	Basic
Number of active members	5,186	3,075	2,111
Average age (years)	46.8	45.5	48.7
Average service (years)	13.7	10.8	17.9
Average annual pay	\$28,740	\$26,986	\$31,296

MPSERS – University Only

Table 7

**University Members in Active Service
as of September 30, 2003 by Annual Salary**

		Type of Plan	
		All Members	Basic Members
Total	3,801	2,031	1,770
Under \$10,000	315	231	84
\$10,000 - 14,999	108	75	33
15,000 - 19,999	124	84	40
20,000 - 24,999	392	241	151
25,000 - 29,999	841	431	410
30,000 - 34,999	647	292	355
35,000 - 39,999	383	160	223
40,000 - 44,999	275	139	136
45,000 - 49,999	179	81	98
50,000 - 54,999	112	61	51
55,000 - 59,999	92	51	41
60,000 - 64,999	63	44	19
65,000 - 69,999	68	32	36
70,000 - 74,999	48	26	22
75,000 - 79,999	39	21	18
80,000 - 84,999	34	22	12
85,000 - 89,999	20	9	11
90,000 - 94,999	16	8	8
95,000 - 99,999	17	10	7
100,000 and over	28	13	15

MPERS - University Only

University Pensions in Force on September 30, 2003
By Age, Type and Amount of Pension

Attained Age Groups	All Retirees and Beneficiaries		Age and Service Retirees		Disability Retirees		Surviving Beneficiaries*	
	Number	Annual Pensions	Number	Annual Pensions	Number	Annual Pensions	Number	Annual Pensions
Total	4,672	\$53,616,058	3,875	\$46,051,280	152	\$1,058,338	645	\$6,506,445
Under 30	2	13,184	-	-	-	-	2	13,184
30 - 34	1	13,773	-	-	-	-	1	13,773
35 - 39	1	4,497	-	-	1	4,497	-	-
40 - 44	6	49,481	-	-	3	12,903	3	36,578
45 - 49	19	140,237	4	56,986	9	51,411	6	31,841
50 - 54	70	1,118,809	41	854,199	15	119,094	14	145,516
55 - 59	231	3,883,557	187	3,497,009	28	195,246	16	191,302
60 - 64	562	7,371,192	486	6,622,955	41	351,704	35	396,534
65 - 69	708	8,568,715	634	7,997,842	24	158,651	50	412,222
70 - 74	810	9,338,667	705	8,217,427	14	73,263	91	1,047,977
75 - 79	829	9,143,386	695	7,717,491	8	53,519	126	1,372,376
80 - 84	731	7,658,560	585	6,244,806	7	32,056	139	1,381,699
85 - 89	473	4,628,777	364	3,595,178	2	5,994	107	1,027,606
90 - 94	189	1,344,645	148	1,052,788	-	-	41	291,858
95 - 99	35	296,676	22	159,049	-	-	13	137,627
100 & over	5	41,902	4	35,550	-	-	1	6,352
Average Annual Pension		11,476		11,884		6,963		10,088

Includes beneficiaries of disability retirees.

IPERS - University Only

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Table 9

**University Pensions in Force on September 30, 2003
by Type and Amount of Pension**

Monthly Amount	Type of Pension			
	Total	Age and Service Retirees	Disability Retirees	Surviving Beneficiaries*
Total	4,672	3,875	152	645
* Less than \$200	634	527	12	95
\$ 200 - 399	906	721	57	128
400 - 599	688	564	28	96
600 - 799	535	436	25	74
800 - 999	360	305	12	43
1,000 - 1,199	260	201	7	52
1,200 - 1,399	221	178	4	39
1,400 - 1,599	152	123	4	25
1,600 - 1,799	135	110	2	23
1,800 - 1,999	141	123	-	18
2,000 - 2,199	113	99	-	14
2,200 - 2,399	107	96	-	11
2,400 - 2,599	92	82	-	10
2,600 - 2,799	74	72	-	2
2,800 - 2,999	63	56	-	7
3,000 - 3,199	43	43	-	-
3,200 - 3,399	41	37	1	3
3,400 - 3,599	27	27	-	-
3,600 - 3,799	30	27	-	3
3,800 - 3,999	13	12	-	1
4,000 & over	37	36	-	1
Average Annual Pension	\$11,476	\$11,884	\$6,963	\$10,088

* Includes beneficiaries of disability retirees.

MPSERS - University Only

Table 10

University Retirees and Beneficiaries Reported as of September 30, 2003

By Type of Pension

Type of Pension	Number	Annual Pension
Age and Service		
Straight Life	2,058	\$20,823,646
• Survivor Pension - 100%	804	10,927,047
Survivor Pension - 75%	64	1,168,766
Survivor Pension - 50%	622	8,761,979
Soc. Sec. Equated		
- Straight Life	156	1,923,178
- Survivor Pension - 100%	68	964,306
- Survivor Pension - 75%	6	159,817
- Survivor Pension - 50%	97	1,322,539
Beneficiaries	<u>475</u>	<u>4,929,483</u>
Subtotal	4,350	\$50,980,761
Disability		
Duty	21	113,361
Straight Life	72	471,519
Survivor Pension 100%	40	317,086
Survivor Pension 75%	5	45,505
Survivor Pension 50%	14	110,866
Beneficiaries	<u>35</u>	<u>239,896</u>
Subtotal	187	\$1,298,233
Survivors of Members		
Duty	-	-
Non-Duty	<u>135</u>	<u>1,337,063</u>
Subtotal	135	\$1,337,063
Total Pensions	4,672	\$53,616,057

Table 11

Reconciliation of Member Count from October 1, 2002 to September 30, 2003

	Actives	Retirees	Beneficiaries	Disabled	Deferred Vested
Total as of October 1, 2002	5,186	3,877	620	143	676
New actives	105	-	-	-	-
Retired	-113	122	-	-	-9
Became Disabled	-9	-	-	9	-
Terminated vested	-43	-	-	-	43
Terminated non-vested	-429	-	-	-	-
Transferred out	-962	-	-	-	-18
Transferred in	59	51	-	-	64
Return to active	7	-	-	-	-7
Died with beneficiary	-	-46	46	-	-
Died without beneficiary	-	-129	-21	-	-
Drop-offs/data adjustments	-	-	-	-	-9
Total as of September 30, 2003	3,801	3,875	645	152	740

MPSERS – University Members Only

Table 12

**Summary of Liability Transfers Between MPSERS & University
From October 1, 2002 through September 30, 2003**

1. Transfers between segments	
a) 962 University actives as of 10/1/2002 who transferred to non-University by 10/1/2003	\$ (6,828,322)
b) 59 Non-University actives as of 10/1/2002 who transferred into University by 10/1/2003	1,357,302
c) 51 Non-University pensioners as of 10/1/2002 who were coded as University as of 10/1/2003	5,977,902
d) 18 University terminated vesteds as of 10/1/2002 who were coded as non-University as of 10/1/2003	(1,027,921)
e) 64 Non-University terminated vesteds as of 10/1/2002 who were coded as University as of 10/1/2003	3,151,894
f) Total transfers	\$ 2,630,855

MPSERS

Table 13

Allocation of September 30, 2003 MPERS Assets Between University and Non-University Members

Pension Assets Only

	Total MPERS Assets	University Assets	Non-University Assets
Beginning of Year Assets			
a) Market Value	\$ 29,655,593,676	\$554,776,576	\$29,100,817,100
b) Valuation Assets	38,382,189,323	723,862,076	37,658,327,247
End of Year Assets at Market Value = (1a) + (5e)	33,162,274,148	612,497,646	32,549,776,502
Net Additions to Market Value			
a) Member Contributions	379,084,549	3,630,001	375,454,548
b) Employer Contributions	697,906,265	10,135,975	687,770,290
c) Investment Income*	4,532,071,835	84,024,619	4,448,047,216
d) Benefit Payments	(2,180,574,193)	(53,976,531)	(2,126,597,662)
e) Contribution Refunds/Transfers	(13,642,300)	0	(13,642,300)
f) Administrative Expenses*	(23,016,963)	(426,735)	(22,590,228)
g) Transfer to stabilization subaccount	114,851,279	11,702,886	103,148,393
h) Transfer in or (out)	0	2,630,855	(2,630,855)
i) Total Additions to Market Value	3,506,680,472	57,721,070	3,448,959,402
Average Market Value of Assets = (1a) + .5 x [(5a) + (5c)]	29,154,406,476	540,522,742	28,613,883,734
Summary of Net Additions to Market Value			
a) Net Contributions = (3a) + (3b) + (3c) + (3g)	1,178,199,793	25,468,862	1,152,730,931
b) Net Investment Income = (3c) + (3f)	4,509,054,872	83,597,884	4,425,456,988
c) Benefit Payments = (3d)	(2,180,574,193)	(53,976,531)	(2,126,597,662)
d) Transfer in or (out) = (3h)	0	2,630,855	(2,630,855)
e) Total Additions to Market Value	3,506,680,472	57,721,070	3,448,959,402
Average Valuation Assets = (1b) + .5 x [(5a) + (5c)]	37,881,002,123	709,608,241	37,171,393,882
Imputed Income at Valuation Rate = 8% x (6)	3,030,480,170	56,768,659	2,973,711,511
Gain (Loss) from Investments for 2002 = (5b) - (7)	1,478,574,702	26,829,225	1,451,745,477
Portion of Gains (Losses) recognized from prior years			
a) From this year = .2 x (8)	295,714,940	5,365,845	290,349,095
b) From one year ago	(1,383,627,141)	(26,588,607)	(1,357,038,535)
c) From two years ago	(1,502,383,099)	(29,851,560)	(1,472,531,539)
d) From three years ago	408,878,343	8,310,134	400,568,209
e) From four years ago	497,305,526	10,203,339	487,102,187
f) Total	(1,684,111,431)	(32,560,849)	(1,651,550,582)
Change in Valuation Assets = (5a) + (5c) + (5d) + (7) + (9f)	343,994,339	(1,669,004)	345,663,343
End of Year Assets			
a) Market Value = (2)	33,162,274,148	612,497,646	32,549,776,502
b) Valuation Assets = (1b) + (10)	38,726,183,662	722,193,072	38,003,990,590
Actuarial Rate of Return	3.55%	3.41%	3.56%

Allocated in proportion to average market value (i.e., item 4)

Table 14

Unfunded Actuarial Accrued Liability and Actuarial Gain (Loss)
Pension Benefits Only

Unfunded Actuarial Accrued Liability as of September 30, 2003			
	Total	University Members	Non-University Members
1. Actuarial accrued liability	\$44,769,473,523	\$842,797,144	\$43,926,676,379
2. Valuation assets	38,726,183,662	722,193,072	38,003,990,590
3. Unfunded (overfunded) actuarial accrued liability = (1) - (2)	6,043,289,861	120,604,072	5,922,685,789
Derivation of Actuarial Gain (Loss)			
	Total	University Members	Non-University Members
4. Unfunded (overfunded) actuarial accrued liability (UAAL) at start of year	3,575,040,216	94,843,671	3,480,196,545
5. Normal cost	1,004,650,869	15,809,784	988,841,085
6. Actual employer and member contributions	1,076,990,814	13,765,976	1,063,224,838
7. Transfer from (to) stabilization account	114,851,279	11,702,886	103,148,393
8. Expected UAAL at end of year = (4) + (5) - (6) - (7), adjusted for interest	3,706,550,595	93,018,115	3,613,532,480
9. Change from revisions in actuarial assumptions	-0-	-0-	-0-
10. Expected UAAL after changes = (8) + (9)	3,706,550,595	92,018,115	3,613,532,480
11. Actual UAAL at end of year	6,043,289,861	120,604,072	5,922,685,789
12. Gain (loss) = (10) - (11)	(2,336,739,266)	(27,585,957)	(2,309,153,309)
13. Actuarial accrued liability at start of year	41,957,229,539	818,705,747	41,138,523,792
14. Gain (loss) as percent of pension actuarial accrued liabilities at start of year	(5.57)%	(3.37)%	(5.61)%
15. Portion of gain (loss) due to investment performance	(1,684,111,431)	(32,668,329)	(1,651,443,102)



EXHIBIT

2

March 31, 2004

Mr. Christopher DeRose
Director of Office of Retirement Services
General Office Building - 3rd Floor
P.O. Box 30171
Lansing, Michigan 48909

**Re: Actuarial Valuation as of September 30, 2003 for Michigan Public School
Employees Retirement System Health Benefits**

Dear Chris:

We have completed an actuarial valuation of postretirement health benefits provided by the Michigan Public School Employees Retirement System (the "System"). This actuarial valuation was prepared as of September 30, 2003, and utilized the same actuarial assumptions used for the September 30, 2003 valuation of System pension benefits. Although health benefits are *not* currently prefunded, the valuation produces an employer contribution rate that would apply if prefunding were to be implemented.

The results of our valuation are presented in the following tables:

Table 1	-	Contribution Rates as a Percentage of Payroll - Health Benefits Only
Table 2	-	Actuarial Valuation Results as of September 30, 2003 with comparison to September 30, 2002
Table 3	-	Historical Funding Levels for Actuarial Accrued Liabilities
Table 4	-	Funding Objective Achievement Indicators - Historical Comparison
Table 5	-	Historical Funding Levels for Actuarial Accrued Liability
Table 6	-	Summary of Member Data
Table 7	-	Change in Health Assets for Fiscal 2003 and 2002
Tables 8-A and 8-B	-	Assumption for System-Paid Health Benefits - 2003 and 2002
Table 9	-	Summary of Postretirement Health Benefits Coverage

Mr. Christopher DeRose
March 31, 2004
Page 2

Note that both the liabilities and level funded contribution rate continued to increase between the 2002 and 2003 valuations, although the pace of increase slowed somewhat. This is primarily due to a combination of the following factors:

1. Without prefunding, assets are not being accumulated to support the increasing liabilities.
2. The annual increase in System-paid claims is assumed to be 9%, 8%, 7% and 6% for the next four years and 5% thereafter. This is the same as was assumed in 2002. However, based on the 2002 assumption, increases of 8%, 7%, 6% and 5% would have been anticipated for the next four years instead of 9%, 8%, 7% and 6%. We retained last year's percentage increase assumption because the outlook for medical inflation remains high over the next few years (particularly with regard to prescription drugs).
3. Actual premium increases were less than anticipated during the last year, thereby slowing the overall increase in the pre-funded employer contribution rate.

Please call if you have any questions.

Sincerely,

Michael Karlin

nps

Enclosures

cc: Phillip J. Stoddard

602892/03603.001

Table 1

Contribution Rates as a Percentage of Payroll

Health Benefits Only

	Valuation as of September 30,		
	2003	2002	2001
Normal Cost	7.16%	7.09%	6.85%
Amortization payments	<u>8.29</u>	<u>7.73</u>	<u>7.67</u>
Total Employer Contribution requirement	15.44%	14.82%	14.52%
Payroll used in deriving contribution rates in millions)	\$10,043.9	\$9,707.3	\$9,264.2
Number of years amortization	33	34	35

Table 2

Actuarial Valuation Results as of September 30, 2003 and September 30, 2002Health Benefits Only

	September 30, 2003	September 30, 2002
Actuarial accrued liability - total	\$16,149,131,232	\$14,697,753,192
Active employees	8,280,327,936	7,764,502,824
Inactive vested members	46,740,888	36,275,904
Retirees and surviving beneficiaries	7,822,062,408	6,896,974,464
Assets at market value	443,532,220	319,800,957
Unfunded actuarial accrued liability = (1) - (2)	15,705,599,012	14,377,952,235
Amortization factor (40 years from September 30, 1996 as a level percentage of payroll; 33 years remaining on September 30, 2003)	0.05299559	0.05221406
Payment required to amortize unfunded actuarial accrued liability as a level percentage of payroll = (3) x (4)	832,327,486	750,731,261
Normal cost	718,643,700	688,346,172
Total employer cost = (5) + (6)	1,550,971,186	1,439,077,433
Total payroll (greater of rate and earnings)	10,043,862,298	9,707,280,750
Normal cost as percentage of payroll = (6)/(8)	7.16%	7.09%
Payment required to amortize unfunded actuarial accrued liability as a percentage of projected payroll = (5)/(8)	8.29%	7.73%
Total employer cost as percentage of payroll = (7)/(8)	15.44%	14.82%

SERS

Table 3

Historical Funding Levels for Actuarial Accrued LiabilitiesHealth Benefits Only(Dollar Amounts in Millions)

Valuation Date September 30	Actuarial Accrued Liability	Valuation Assets	Funded Ratio	Unfunded Actuarial Accrued Liability	Active Member Payroll**	Unfunded As % of Active Payroll
1985	\$ 1,488	\$ 0	0.0%	\$ 1,488	\$ 4,220	35.3%
1986	1,739	88	5.1	1,651	4,561	36.2
1987	1,974	251	12.7	1,723	4,739	36.4
1988	2,243	261	11.6	1,982	5,248	37.8
1989	2,888	302	10.5	2,586	5,403	47.9
1990	3,332	348	10.4	2,984	5,818	51.3
1991	4,164	377	9.1	3,787	6,248	60.6
1992	4,841	426	8.8	4,415	6,593	67.0
1993	5,736	398	6.9	5,338	7,070	75.5
1994	6,403	295	4.6	6,108	7,344	83.2
1994*	6,309	295	4.7	6,014	7,344	81.9
1995	6,886	318	4.6	6,568	7,565	86.8
1996	6,861	179	2.6	6,682	7,807	85.6
1999*	11,164	124	1.1	11,040	8,644	127.7
2000	12,650	133	1.1	12,517	8,984	139.3
2001	13,990	188	1.3	13,802	9,264	149.0
2002	14,698	320	2.2	14,378	9,707	148.1
2003	16,149	444	2.7	15,706	10,044	156.4

* Revised actuarial assumptions.

** Includes payroll projection factor through 1994.

MPERS

Table 4

Funding Objective Achievement Indicators - Historical Comparison

Health Benefits Only

(Dollar Amounts in Millions)

Valuation September 30	Valuation Assets	Termination Indicator	
		Actuarial Present Value of Vested Benefits	Funded Ratio
1993	\$396	\$4,763	8.3%
1993	398	4,763	8.4
1994	295	5,226	5.6
1994*	295	4,338	6.8
1995	318	4,341	7.3
1996	179	4,371	4.1
1999*	124	7,214	1.7
2000	133	8,376	1.6
2001	188	9,421	2.0
2002	320	9,988	3.2
2003	444	11,256	3.9

* Revised actuarial assumptions

MPERS

Table 5

Historical Funding Levels for Actuarial Accrued Liability
Health Benefits Only
(Dollar Amounts in Millions)

Valuation Date September 30,	Actuarial Accrued Liability For		Valuation Assets	Portion of Present Value Covered by Assets	
	Retirees and Beneficiaries	Active and Inactive Vested Members		Retirees and Beneficiaries	Active and Inactive Vested Members
1986	\$ 694	\$ 860	\$ 88	12.7%	0.0%
1987	807	1,042	251	31.1	0.0
1988	939	1,237	261	27.8	0.0
1999	1,311	1,539	302	23.0	0.0
1990	1,544	1,978	348	22.5	0.0
1991	1,838	2,295	377	20.5	0.0
1992	2,099	2,550	426	20.3	0.0
1993	2,580	2,691	398	15.4	0.0
1994	2,983	3,008	295	9.9	0.0
1994*	2,766	3,326	295	10.7	0.0
1995	3,060	4,068	318	10.4	0.0
1996	3,167	3,890	179	5.7	0.0
1999*	5,188	5,976	124	2.4	0.0
2000	6,029	6,621	133	2.2	0.0
2001	6,617	7,373	188	2.8	0.0
2002	6,897	7,801	320	4.6	0.0
2003	7,822	8,327	444	5.7	0.0

* Revised actuarial assumptions

MPERS

Table 6

Summary of Member Data

	2003	2002
<u>Actives</u>		
Number	326,938	326,350
Average age	43.8	43.6
Average service	9.7	9.5
Reported payroll	\$10,043,862,298	\$9,707,280,750
Average annual pay	\$30,721	\$29,745
<u>Inactive Vesteds</u>		
Number	1,332	1,299
Average age	56.1	55.3
<u>Retirees and Beneficiaries</u>		
Number	139,814	135,277
Average age	70.4	70.4
Number over 65	95,123	94,003
Number under 65	44,691	41,274

Table 8-A
Assumption for System-Paid Health Benefits - 2003

The weighted average monthly reported System-paid amounts for health benefits as of September 30, 2003 were as follows:

	<u>Master Health Care Plans</u>		<u>Dental & Vision Plans</u>
	<u>Without Medicare</u>	<u>With Medicare</u>	
<u>Single Coverage</u>			
Number of retirees covered	10,291	46,424	56,270
Average System-paid amount	\$475.60	\$264.05	\$27.14
<u>Spouse and/or Family Coverage</u>			
Number of retirees covered	19,919*	33,346*	59,747
Average System-paid amount	\$846.30	\$500.70	\$55.89
Total retirees with Coverage	30,210	79,770	116,017

* For spousal and family coverage, Medicare status determined by retiree.

These weighted average premium assumptions were derived using detailed data concerning the coverage of the present retired group, including items such as actual System-paid amounts, number of cases of coverage classification and proportions with and without dependents. System-paid per capita amounts are assumed to increase by 9%, 8%, 7% and 6% for the first four years after the valuation date, and 5% annually thereafter. Future retirees are assumed to elect health benefit coverage (including spousal/family coverage) similar to the percentages of the current retiree population.

All other actuarial assumptions are identical to those used in the September 30, 2003 actuarial valuation of System pension benefits.

MPSERS

Table 8-B
Assumption for System-Paid Health Benefits - 2002

The weighted average monthly reported System-paid amounts for health benefits as of September 30, 2002 were as follows:

	<u>Master Health Care Plans</u>		Dental & Vision Plans
	<u>Without Medicare</u>	<u>With Medicare</u>	
<u>Single Coverage</u>			
Number of retirees covered	10,003	45,421	54,979
Average System-paid amount	\$451.08	\$246.93	\$25.94
<u>Spouse and/or Family Coverage</u>			
Number of retirees covered	19,267*	32,113*	57,681
Average System-paid amount	\$795.65	\$471.57	\$53.43
Total retirees with Coverage	29,270	77,534	112,660

* For spousal and family coverage, Medicare status determined by retiree.

These weighted average premium assumptions were derived using detailed data concerning the coverage of the present retired group, including items such as actual System-paid amounts, number of cases of coverage classification and proportions with and without dependents. System-paid per capita amounts are assumed to increase by 9%, 8%, 7% and 6% for the first four years after the valuation date, and 5% annually thereafter. Future retirees are assumed to elect health benefit coverage (including spousal/family coverage) similar to the percentages of the current retiree population.

All other actuarial assumptions are identical to those used in the September 30, 2002 actuarial valuation of System pension benefits.

MPSERS

Table 9

Summary of Postretirement Health Benefits Coverage

Retirees have the option of health coverage, which is funded on a cash disbursement basis by the employers. The Retirement System has contracted to provide the comprehensive group medical, hearing, dental and vision coverages for retirees and beneficiaries. All health care benefits are on a self-funded basis. A significant portion of the premium is paid by the System with the balance deducted from the monthly pension.

Pension recipients are eligible for fully paid Master Health Plan coverage and 90% paid Dental Plan, Vision Plan and Hearing Plan coverage with the following exceptions:

1. Retirees not yet eligible for Medicare coverage pay an amount equal to the Medicare Part B premiums.
2. Retirees with less than 30 years of service, who terminate employment after October 31, 1980 with vested deferred benefits, are eligible for partially employer paid health benefit coverage (no payment if less than 21 years of service, 10% of the maximum employer payment for each year of service over 20 up to 100% for 30 or more years of service).

Dependents are eligible for 90% employer paid health benefit coverages (partial payment for dependents of deferred vested members who had 21 or more years of service, as per the above schedule).

Table 7

Change in Health Assets for Fiscal 2003 and 2002

	Year Ended September 30:	
	2003	2002
Market value of assets at beginning of year (as per last year's report)	\$319,800,957	\$188,737,061
Revisions to prior year's statement	\$ 0	\$ 24,268,166*
Market value of assets at beginning of year	<u>\$319,800,957</u>	<u>\$213,005,227</u>
<u>Additions</u>		
Member contributions	\$ 47,394,003	\$ 43,217,520
Employer contributions	657,408,261	604,628,018
Interest income	25,584,076	17,040,418
Miscellaneous income	<u>0</u>	<u>2,679</u>
Total additions	\$730,386,340	\$664,888,635
<u>Deductions</u>		
Health benefit payments	\$501,566,419	\$460,578,779
Dental/vision benefit payments	57,116,502	52,593,042
Refund of member contributions	64,411	67,115
Administrative expenses	<u>47,907,745</u>	<u>44,853,969</u>
Total deductions	\$606,655,077	\$558,092,905
Net increase (decrease)	<u>123,731,263</u>	<u>106,795,730</u>
Market value of assets at end of year	<u>\$443,532,220</u>	<u>\$319,800,957</u>

* Additional employer contributions not reported in prior year's asset statement.

EXHIBIT

3

Public School Employees Retirement System Strategic Plan Update

Initiative 2004

Chapter 5-13



Gabriel, Roeder, & Smith

6/24/2004

1

Since The Last Board Meeting

- **Held a Health Initiative Review Committee meeting**
- **Received public comments**
- **Health Insurance Committee made and adopted modifications to the proposal in response to the public comments**

6/24/2004

2

Overview

1. Health Care Environment
 - Nationally
 - Public School Employees Retirement System
2. Cost and Quality Goals
3. Health Initiative Review Committee
4. Final proposal

6/24/2004

3

Health Care Environment

- National problem
- Health care costs continue to rise significantly
- Both public and private sector plans that offer retiree benefits are taking action to control escalating costs
- Plans are studying impact of new Medicare legislation on plan design

6/24/2004

4

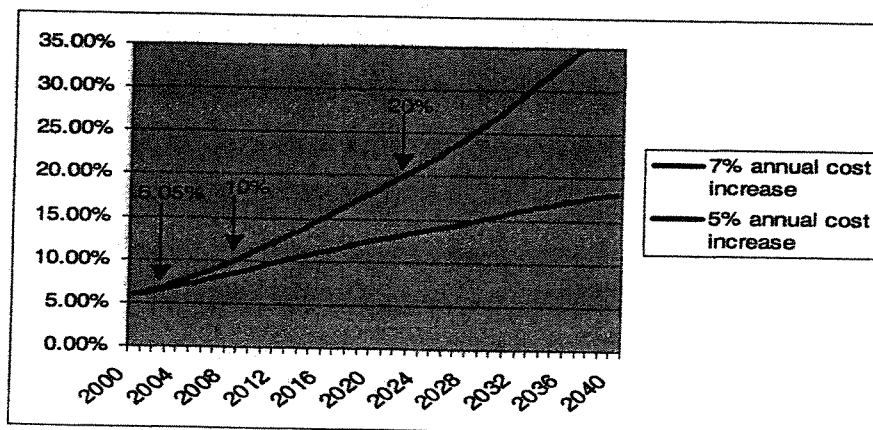
Public School Employees Retirement System Environment

- Members continue to have access to a high quality health plan with many new procedures and drugs
- Health plan's membership and utilization continue to grow
- Health plan's costs, especially drugs, continue rising rapidly
- The State and schools experiencing severe budget problems
- Cost goal was met in 2000 with initiative adoption but not since

6/24/2004

5

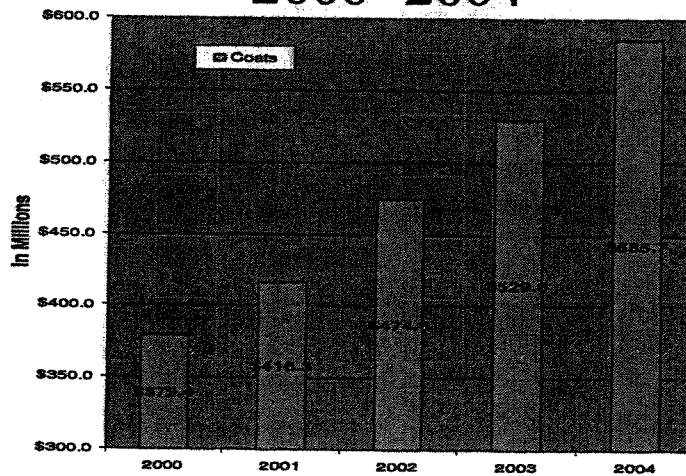
Projected Health Care Costs as Percentage of Payroll



6/24/2004

6

Plan Costs for 2000 -2004



6/24/2004

7

A Little History

- A decade ago
 - The System's costs were rising significantly with no plan to deal with the problem
 - The Board wanted to maintain a high quality health plan that is affordable to both members and the schools
 - With input of the retiree organizations, the Board adopted cost and quality goals

6/24/2004

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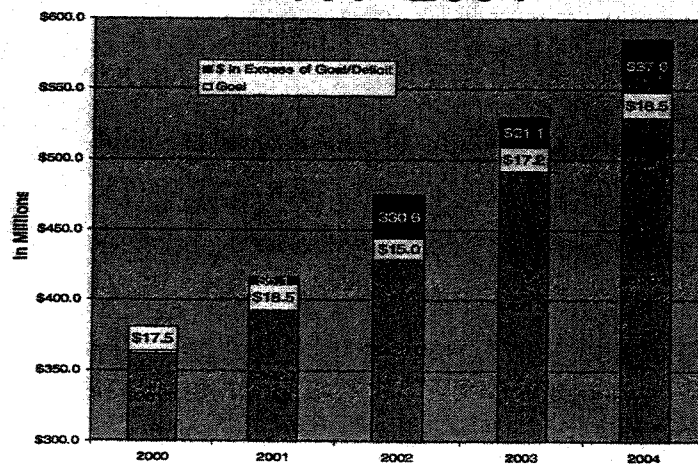
Goals

- Quality
 - Improve the quality of care enjoyed by members
- Cost
 - Limit the rate of cost growth to the compound rate of inflation (CPI) and real economic growth

6/24/2004

9

Plan Costs Breakdown 2000 -2004



Note: 2004 projected

6/24/2004

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Annual Progress in Meeting Goal from 2000-2004

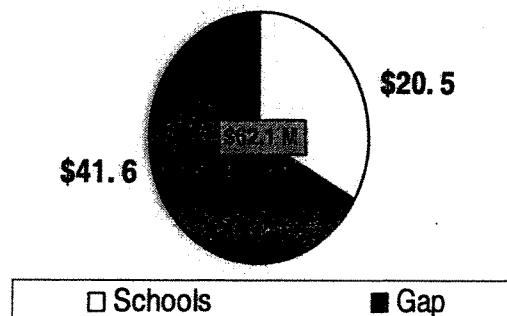
- Actual Cost Increase \$181.1 M
- Goal - \$ 88.4
- Deficit \$ 92.8 M

6/24/2004

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Where We Will Be in 2005

- Costs projected to increase by at least \$62 million
- \$20.5 million covered by increased school funding
- This leaves a funding gap of \$41.6 million, the amount above the cost goal



6/24/2004

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Health Insurance Committee Approach for Current Initiative

- Maintain a high quality plan by keeping it current
- Show responsibility in the face of budget pressures
- Take incremental steps to try to bring costs into line with the cost goal
- Balance costs between members and schools
- Continue to encourage health care consumerism to avoid cost
- Consider alternatives with shared responsibility
- Plan long term solutions

6/24/2004

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At The Last Board Meeting

- Enhancements to the vision, dental, and health plan were proposed
- Updates were proposed using cost avoidance and cost sharing methods to address the funding gap
 - Mail Service Optimization
 - Additional 10% copay starting with the fourth maintenance drug fill at retail with no maximum
 - Update medical deductible to \$235/\$470
 - Update prescription drug min and max to \$4/\$30* at retail
 - Introduce \$50 prescription drug deductible
 - Regularly reflect inflation through indexing
- Benefit cuts were not recommended
- The Board agreed to convene a Health Initiative Review Committee to review and comment

* Mail service min and max are 2.5 times retail

6/24/2004

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Health Initiative Review Committee

- Health Initiative Review participants:
 - Michigan Assoc. of Retired School Personnel (MARSP)
 - Michigan Educations Assoc. (MEA)
 - Retirement Coordinating Council (RCC) and member organizations
 - Michigan Assoc. of School Administrators (MASA)
 - Michigan Assoc. of School Boards (MASB)
 - Michigan Assoc. of School Business Officials (MSBO)
 - Middle Cities Education Assoc. (MCEA)
 - The Universities

6/24/2004

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Health Initiative Review Committee Responses to Proposal

- Vision, Health, & Dental Enhancements
- Medical Deductible
- Mail Service Optimization Program
- Prescription Drug Maximum Update

In general there was understanding and acceptance for these portions of the proposal. Some suggested that the medical deductible change (\$165 to \$235) was too much for one year.

6/24/2004

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Health Initiative Review Committee Responses to Proposal

- Drug Deductible
 - Issues with adding a drug deductible at the same time the prescription drug maximums are being increased
 - Commented on the affordability of the drug deductible for some retirees
- Indexing
 - Should wait until Medicare reform is implemented
 - Some fear it will eliminate Board accountability

6/24/2004

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Health Insurance Committee's Review of Responses

- Health Insurance Committee reviewed the responses from the Health Initiative Review Committee
- Public comments were constructive and helpful
- Health Insurance Committee wanted to:
 - Develop alternatives to address public concerns
 - Continue to meet the 2005 cost goal

6/24/2004

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Adjustments

Based on these responses:

- Replace the prescription drug deductible with a \$7 prescription drug minimum
 - Allows members to spread cost over the year
 - Minimum will be included in the out-of-pocket protection feature
- Revisit indexing after Medicare reform implementation and replace with scheduled 2006 cost sharing updates
 - Will not have a time-consuming and potentially contentious process next year
 - Insures balance between schools and members through 2006

6/24/2004

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Revised Proposal

Plan Element	Original Proposal	Revised Proposal	
		2005	2006
Mail Service Optimization - phase out maintenance drug list by 1/1/05	Additional 10% for fourth maintenance fill at retail with no maximum	No change	No change
Medical Deductible	\$235/\$470 indexed	\$235/\$470	\$250/\$500
Drug Deductible	\$50		
Drug Retail Min*	\$4 indexed	\$7	\$7
Drug Retail Max*	\$30 indexed	\$30	\$32
Drug O-O-P Max	\$750 indexed	\$750	\$800

*Mail service min and max are 2.5 times retail
Note: No change to Medical O-O-P Max

6/24/2004

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Address 2005 Plan Costs

Initiatives	Potential 2005 Impact
Vision Plan Enhancements	N/A
Health Benefit Enhancements	N/A
Delta Dental National PPO Network	\$2.3 million
Adjust medical deductible to \$235/\$470	\$6.7 million
Mail Service Optimization – additional 10% for fourth maintenance drug fill at retail with no maximum & phase out maintenance drug list by 1/1/05	\$14.7 million
Update drug co-pay mins and maxs to \$7/\$30*	\$17.9 million
<u>2006 scheduled cost sharing updates:</u> \$250/\$500 medical deductible \$7/\$32* co-pay mins and maxs \$800 Drug out-of-pocket max	N/A
Initiative Impact	\$41.6 million
Amount to be covered by the Schools	\$20.5 million
Projected 2005 total cost increase	\$62.1 million

* Mail service min and max are 2.5 times retail
6/24/2004

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Maintains Protection Features

- The health plan will still limit the amount a member pays in copayments each year.
 - For medical services: \$500 for individuals and \$750 for families
 - For prescription drugs: \$750 per individual

6/24/2004

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Summary

These recommendations:

- Keep the plan in the mainstream and improve quality by enhancing the dental, vision and health plans
- Take incremental steps to promote consumerism and achieve the cost goal
 - Mail Service Optimization
 - Additional 10% starting with the fourth maintenance drug fill at retail with no maximum
 - Update medical deductible to \$235/\$470
 - Update prescription drug min and max to \$7/\$30* at retail
 - Reflect inflation with scheduled update
- Preserve protection feature
- Plan for long term solutions as health care costs continue to rise

* Mail service min and max are 2.5 times retail
6/24/2004

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EXHIBIT

4

Westlaw.

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Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
 RULES BEFORE CITING.

Court of Appeals of Michigan.

J. Edward HANNAN,
 Plaintiff/Counterdefendant-Appellant,
 v.

DETROIT CITY COUNSEL,
 Defendant/Counterplaintiff-Appellee,
 and
 RETIRED DETROIT POLICE AND FIRE
 FIGHTERS ASSOCIATION and DETROIT
 RETIRED CITY
 EMPLOYEES ASSOCIATION, Intervening
 Defendants/Counterplaintiffs-Appellees.

No. 211704.

Sept. 1, 2000.

Before: OWENS, P.J., and NEFF and
 FITZGERALD, JJ.

PER CURIAM.

*1 Plaintiff, the budget director for the city of Detroit, appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. We affirm.

In July 1997, the **Detroit City Council** (the council) passed two ordinances (the pension enhancement ordinances) dealing with former city employee retirement benefits. The first ordinance (the pension ordinance) increased the pension benefits of "qualified retirees," who are those retirees that retired prior to July 1, 1992, and served the city for an excess of ten years. Specifically, the pension ordinance increased the pension multiplier for the defined benefit from 1.5 percent to a graduated system wherein 1.5 percent is used for

the first ten years of service, and 1.56 percent is used for service years in excess of ten years. The second ordinance (the health benefit ordinance) provided that effective July 1, 1996, fully paid hospitalization was to be provided to widows of police officers and fire fighters who retired between July 1, 1985, and June 30, 1987, or prior to July 1, 1980, and who had selected a straight line retirement option that did not include fully paid hospitalization for surviving spouses.

The mayor of the city of Detroit vetoed both ordinances; however, the council overrode the mayor's veto on a vote of eight to zero. Plaintiff filed his complaint on July 22, 1997, seeking a declaratory judgment that the pension enhancement ordinances were unlawful. The council answered the complaint and counterclaimed for a declaratory judgment that the ordinances were valid and for an order requiring plaintiff to allocate the appropriate funds for the pension enhancement ordinances. The Detroit Retired City Employees Association (DRCEA) and the Retired Detroit Police and Fire Fighters Association (RDPFFA) were allowed to intervene as party defendants. On April 24, 1998, the trial court granted the council's motion for summary disposition.

We review a trial court's grant of summary disposition de novo. *Spiek v. Dep't of Transportation*, 456 Mich. 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v. Rozwood*, 461 Mich. 109, 119-120; 597 NW2d 817 (1999). In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4); *Quinto v. Cross & Peters Co.*, 451 Mich. 358; 547 NW2d 314 (1996). Furthermore, a question of a statute's constitutionality is a question

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of law that is reviewed de novo. *People v. Webb*, 458 Mich. 265, 274; 580 NW2d 884 (1998). The rules governing the construction of statutes apply with equal force to the interpretation of municipal ordinances. *Gora v. City of Ferndale*, 456 Mich. 704, 711; 576 NW2d 141 (1998).

*2 Plaintiff first argues that the council violated Const 1963, art 9, § 24, when it passed the pension enhancement ordinances. City ordinances are presumed to be constitutional, and courts have a duty to construe an ordinance as constitutional unless it is clearly apparent that it is unconstitutional. *McDougall v. Schanz*, 461 Mich. 15, 24; 597 NW2d 148 (1999). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins v. Marlette Homes, Inc*, 456 Mich. 511, 515; 573 NW2d 611 (1997).

Const 1963, art 9, § 24 provides:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

This Court explained in *Halstead v. City of Flint*, 127 Mich.App 148, 154- 155; 338 NW2d 903 (1983), that the purpose of the first paragraph of § 24 was to "obviate the harsh rule that pensions granted by public authorities were not contractual obligations but were gratuitous allowances revocable at will by the public authority ." This Court has also stated that, "Article 9, § 24 protects those persons covered by a state or local pension or retirement plan from having their benefits reduced." *Seitz v Probate Judges Retirement System*, 189 Mich.App 445, 449; 474 NW2d 125 (1991). In this case, the pension enhancement ordinances do not diminish or impair the full payment of accrued financial benefits to plan participants. Rather, the ordinances supplement retiree benefits and are paid for through the general fund.

The second paragraph of Const 1963, art 9, § 24 expressly mandates "townships and municipalities

to fund all public employee pension systems to a level which includes unfunded accrued liabilities." *Shelby Twp Police and Fire Retirement Bd v Shelby Twp*, 438 Mich. 247, 255-256; 475 NW2d 249 (1991). In *Musselman v. Governor*, 448 Mich. 503, 511-512; 533 NW2d 237 (1995), the Supreme Court explained:

The purpose of the provision is, after all, to check legislative bodies, requiring them to fund pension obligations annually, and thereby preventing back door spending. Article 9, § 24 arose out of concern about legislative bodies failing to fund pension obligations at the time they were earned, so that the liabilities of several public pension funds greatly exceeded their assets.

Plaintiff argues that the pension enhancement ordinances increase the current liabilities and, therefore, must be funded immediately. Defendants argue that the enhanced benefits provided by the council's ordinances are not earned benefits in the year that they were awarded and, therefore, article 9, § 24 does not apply.

*3 The first part of the second paragraph of article 9, § 24 describes what obligations must be funded each fiscal year. The language identifies "[f]inancial benefits arising on account of services rendered in each fiscal year" Every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used; technical terms are to be accorded their peculiar meanings. MCL 8.3a; MSA 2.212(1), *Western Michigan University Bd of Control v State*, 455 Mich. 531, 539; 565 NW2d 828 (1997). The plain meaning of the provision is that funding must take place when an employee's service earned the benefit. In this case, both pension enhancement ordinances affect retirees and not those that are currently working and accruing financial benefits. The pension ordinance affects only those former city employees that retired prior to July 1, 1992. The health benefit ordinance affects only those widows of police and fire fighters who had retired between July 1, 1985, and June 30, 1987, or prior to July 1, 1980. Both pension enhancement ordinances were passed in 1997, and did not occur during the retirees' service. Therefore, article 9, § 24 does not apply to the pension enhancement ordinances passed by the council because the ordinances confer a benefit that was not

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earned during the year the benefit was given.

In *Halstead, supra* at 148, this Court examined the constitutionality of a pension enhancement ordinance passed by the Flint City Council. In *Halstead*, the plaintiffs, who were pension beneficiaries that were excluded from the enhancements, argued that the ordinance denied them equal protection and violated Const 1963, art 9, § 24. *Id.* at 152. In examining the argument that the ordinance violated art 9, § 24, this Court held that the ordinance did not burden the Flint retirement system's current service funding with an unfunded liability because the service funding had a surplus and the cost of the enhancement would only require approximately one-third of the surplus. *Id.* at 155-156.

The second portion of the second paragraph of article 9, § 24, requires that the pension funding, otherwise known as current service funding, not be used for unfunded accrued liabilities. Here, the pension increases described by the pension enhancement ordinances are unfunded accrued liabilities because they are liabilities that are not accrued in the current year. The pension enhancement ordinances passed by the council are funded through the general fund and not through current service funding. Therefore, the pension enhancement ordinances do not violate this portion of the constitution.

Next, plaintiff argues that the trial court erred in determining that there was no genuine issue of material fact as to whether the ordinances met the "public interest" test in *Halstead, supra* at 148. Plaintiff claims that *Halstead* requires that the council make a finding of a "public purpose" in enacting the pension enhancement ordinances. An examination of *Halstead* does not support plaintiff's argument. Unlike the present case, the plaintiffs in *Halstead* asserted that the pension increases constituted a gratuity outside the Flint City Council's authority to conduct affairs for the public purpose. *Id.* at 158. This Court disagreed, stating:

*4 We disagree with the claim that the ordinance under scrutiny is not furthering a public purpose. By adopting an ordinance ensuring that its employees will have a pension at least equivalent to the poverty level as established by the United States Department of Labor, defendants have

adopted a mechanism that can be characterized as additional compensation for valuable services rendered as opposed to a gratuity. [*Halstead, supra* at 158.]

In this case, plaintiff does not allege that the pension enhancement ordinances were a gratuity. Even if plaintiff argued that the ordinances constituted a gratuity, we find that the council made sufficient findings regarding the public purpose of the ordinances. The council passed the pension enhancement ordinances with the purpose of ensuring that those retirees that were most affected by inflation would not be impoverished, and that those widows of police and fire fighter retirees that did not have hospitalization coverage would not be disparately impacted.

Plaintiff did not raise an equal protection argument in the trial court; however, plaintiff appears to be attempting to indirectly argue equal protection by arguing that the equal protection analysis in *Halstead* should be applied in this case. The appropriate test for equal protection is the reasonable-relationship test. *Halstead, supra* at 156. Under that test, the burden is on the plaintiff to show that the legislative classification is not rationally related to a legitimate government interest. *Id.* See also *Verbison v. Auto Club Ins Ass'n*, 201 Mich.App 635, 638; 506 NW2d 920 (1993). Furthermore, when an ordinance is enacted in the interest of the public health, safety, and welfare, it is presumed valid. *Square Lake Hills Condominium Ass'n v Bloomfield Twp*, 437 Mich. 310, 317-318; 471 NW2d 321 (1991).

In this case, the council made findings that unanticipated inflationary pressures had eroded and impoverished the income level that was intended for city retirees. Plaintiff has the burden to present evidence that the classification of beneficiaries was without reasonable justification. Here, plaintiff has only argued that the council should have considered other classifications. We find that plaintiff has failed to present any evidence that the ordinances were not narrowly tailored to benefit only those retirees and their beneficiaries that were unforeseeably impacted by inflation or disparately impacted from similarly situated widows who were receiving hospitalization benefits.

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Last, plaintiff argues that the trial court erred in finding that the pension enhancement ordinances did not violate the Detroit City Charter. Pursuant to the charter, the executive branch, under the direction of the mayor, has the responsibility to negotiate and administer collective bargaining agreements. 1997 Detroit City Charter, § 6-508. All collective bargaining agreements must be ratified by the council before the agreement becomes effective. 1997 Detroit City Charter, § 6-508. Plaintiff contends that the council impermissibly modified current and future collective bargaining agreements by changing pension benefits.

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END OF DOCUMENT

*5 Individuals that have retired are no longer part of the employee bargaining unit, and issues regarding retirees' benefits, are not mandatory subjects of collective bargaining. *Allied Chemical and Alkali Workers of America v Pittsburgh Plate Glass Co*, 404 U.S. 157, 172; 92 S Ct 383; 30 L.Ed.2d 341 (1970). In this case, the individuals affected by the pension enhancement ordinances are retirees, not employees, and are not the subjects of collective bargaining agreements.

Here, the pension enhancement ordinances only changed benefits for those retirees and retirees' widows specifically defined by the ordinance. All of the enhanced benefits went to people who were already retired or are widows of retirees. Furthermore, the funding for the increased benefits was provided through the general fund and not the current liability fund. We find that the pension enhancement ordinances do not affect current or future collective bargaining agreements.

We also find that § 9-601 of the charter, which gives retired general city employees the right to be represented in city legislative and budgetary meetings on issues affecting their interests, contemplates the council having authority to enact legislation on behalf of retirees and recognizes the council's power to enact legislation for the benefit of retirees. Therefore, the council's actions in passing the pension enhancement ordinances do not interfere with the ability of the executive branch to negotiate and administer collective bargaining agreements.

Affirmed.

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